

1

H.615

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Introduced by Representatives Klein of East Montpelier, Ancel of Calais,

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Barnard of Richmond, Botzow of Pownal, Clarkson of

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Woodstock, Deen of Westminster, Dostis of Waterbury,

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Edwards of Brattleboro, Errecart of Shelburne, Evans of Essex,

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Kiss of Burlington, Kupersmith of S. Burlington, Maier of

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Middlebury, Marek of Newfane, Masland of Thetford,

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McCullough of Williston, Nuovo of Middlebury, Pellett of

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Chester, Pillsbury of Brattleboro, Reese of Pomfret and Shand

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of Weathersfield

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Referred to Committee on *Government Operations*

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Date:

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Subject: Public records; disclosure; deliberative process privilege

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Statement of purpose: This bill proposes to clarify that the common law

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deliberative process privilege is not an exemption to the state public records

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act and the right to inspect and copy records under that act. The bill also

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proposes that when an agency claims a record is exempt from inspection, the

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agency shall include a list of each record withheld and the specific exemption

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asserted. In addition, the bill would require the secretary of administration to

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report annually to the house and senate committees on government operations

1 the number of public records requests received each year by state agencies and  
2 the agency time needed to respond to such requests.

3 AN ACT RELATING TO THE PUBLIC RECORDS ACT AND  
4 APPLICATION OF THE DELIBERATIVE PROCESS PRIVILEGE

5 It is hereby enacted by the General Assembly of the State of Vermont:

6 *See P. 1a*  
~~Sec. 1. 1 V.S.A. § 317(b) is amended to read:~~

7 (b) As used in this subchapter, "public record" or "public document" means  
8 all papers, documents, machine readable materials, computer databases, or any  
9 other written or recorded matters, regardless of their physical form or  
10 characteristics, that are produced or acquired in the course of agency business.  
11 Individual salaries and benefits of and salary schedules relating to elected or  
12 appointed officials and employees of public agencies shall not be exempt from  
13 public inspection and copying. The common law deliberative process privilege  
14 is not recognized in Vermont, and inter-agency and intra-agency advisory,  
15 consultative, or deliberative material shall not be exempt from public  
16 inspection and copying unless otherwise exempt under subsection (c) of this  
17 section.



~~Sec. 1. 1 V.S.A. § 317(c) is amended to read:~~

~~(c) The following public records are exempt from public inspection and copying:~~

~~\*\*\*~~

~~(4) records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process privilege as it applies to the executive branch agencies of the state of Vermont;~~

Sec. 1. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

\*\*\*

(4) records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process privilege as it applies to the general assembly and the executive branch agencies of the state of Vermont;

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Sec. 2. 1 V.S.A. § 318(a)(2) is amended to read:

(2) if the custodian considers the record to be exempt from inspection under the provisions of this subchapter, ~~he the custodian~~ shall so certify in writing ~~stating his reasons for denial of access to the record.~~ Such certification shall identify the records withheld and the basis for the denial. The certification shall be made within two business days, unless otherwise provided in subdivision (5) of this subsection. The custodian shall also notify the person of his right to appeal to the head of the agency any adverse determination;

Sec. 3. SECRETARY OF ADMINISTRATION REPORT

The secretary of administration shall submit an annual report to the house and senate committees on government operations on January 15. The report shall include a list of the written public records requests received for the prior calendar year for each state agency; the number of records delivered or withheld by each state agency; the number of records that could not be located by each state agency; and the agency time needed to respond to each request.



## Sec. 4. LEGISLATIVE COUNCIL STUDY

The legislative council, in consultation with the state archivist, the public records specialists in the department of buildings and general services, the agency of administration, the division of vital records in the department of health, the Vermont league of cities and towns, the Vermont municipal clerks and treasurers association, and other interested parties, shall study the public records law of the state of Vermont as set forth in chapter 5 of Title 1, 3 V.S.A. § 218, and the numerous exemptions to the public records requirements throughout the Vermont statutes. On or before January 15, 2007, the legislative council shall report to the house and senate committees on government operations. The report shall include:

(1) A summary of the statutory requirements and organization of the state public records requirements;

(2) An analysis of the ease of access and use of public records under the existing state public records requirements and any recommendations to improve use of and access to public records;

(3) An analysis of the need and justification for each of the existing exemptions in statute to the inspection and review requirements of the public records act;

(4) A review of the management and administration of public records requirements by the department of buildings and general services, other state agencies, and municipalities;

(5) A summary of the pending federal regulations for the administration, issuance, and inspection of vital records and a review of how such regulations will impact Vermont public records management and inspection;

(6) A summary of the enforcement of public records requirements in the state, including the ability of an aggrieved person to appeal a decision of a public agency, and a summary of public records enforcement and appellate authority in other states; and

(7) Proposed legislation to amend, reorganize, and simplify the public records requirements of the state of Vermont.

ATTESTED TO:

  
Donald G. Milne  
Clerk, House of Representatives

  
GAYE R. STYINGTON  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

  
BRIAN E. DUBIE  
PRESIDENT OF THE SENATE

  
GOVERNOR

5/4/06  
Date

1 ~~Sec. 2. 1 V.S.A. § 317(c)(4) is amended to read:~~

2 (4) except as set forth in subsection (b) of this section, records which, if  
3 made public pursuant to this subchapter, would cause the custodian to violate  
4 any statutory or common law privilege;

5 Sec. 3. 1 V.S.A. § 318(a)(2) is amended to read:

6 (2) if the custodian considers the record to be exempt from inspection  
7 under the provisions of this subchapter, ~~he~~ the custodian shall so certify in  
8 writing ~~stating his reasons for denial of access to the record.~~ Such certification  
9 shall identify each record withheld and the specific exemption asserted. The  
10 certification shall be made within two business days, unless otherwise provided  
11 in subdivision (5) of this subsection. The custodian shall also notify the person  
12 of his right to the head of the agency any adverse determination;

13 Sec. 4. SECRETARY OF ADMINISTRATION REPORT

14 The secretary of administration shall submit an annual report to the house  
15 and senate committees on government operations on January 15. The report  
16 shall include the number of public records requests received each year by state  
17 agencies and the agency time needed to respond to such requests.



ORIGINAL

H.615

AN ACT RELATING TO THE PUBLIC  
RECORDS ACT AND  
APPLICATION OF THE  
DELIBERATIVE PROCESS  
PRIVILEGE.

Masland of Thetford, McCullough of  
Williston, Nuovo of Middlebury, Pellet of  
Chester, Pillsbury of Brattleboro, Reese of  
Pomfret and Shand of Weathersfield.

Read the first time and referred to  
Committee on *Gov. Ops.*

*Conrad M. Clark*

PROOFREAD

House Passage  
Final Passage

HOUSE OF REPRESENTATIVES

*2/16*, 20 *06*  
ENTERED ON THE CALENDAR  
FOR NOTICE.

*Attest: M. M. Clark*  
ASST. CLERK

HOUSE OF REPRESENTATIVES

January 16, 2006

Introduced by Representatives Klein of East  
Montpelier, Ansel of Calais, Barnard of  
Richmond, Belzow of Pownal, Clarkson of  
Woodstock, Deen of Westminster, Dostis of  
Waterbury, Edwards of Brattleboro,  
Erricart of Shelburne, Evans of Essex, Kiss  
of Burlington, Kupersmith of S. Burlington,  
Maier of Middlebury, Marek of Newfane,

HOUSE OF REPRESENTATIVES

*2/17*, 2006

RPT. FAV. W/RBC. OF  
AMEND. BY C. ON *Gov. Ops.*  
RPT. FAV. W/RBC. OF

AMEND. BY C. ON  
RD. 2ND T. REG. OF

AMEND. OF C. ON *Gov. Ops.*  
AGREED TO, *Gov. Ops.*  
C. ON

AND 3RD READING  
*M. M. Clark*  
ASST. CLERK

PENDING THE QUESTION *Shall*  
*the bill be amended as*  
*recommended by Gov. Ops.?*

REP. *F. Fry* OF *Pittsford*  
MOVED THAT THE BILL BE  
COMMITTED TO THE COMMITTEE ON

Judiciary  
*Agreed to on a Division.*  
*YES NO*

PENDING THE QUESTION

*Committed to Judiciary?*

REP. *Bradridge* OF *Windsor*  
DEMANDED THE YEAS AND NAYS,  
WHICH DEMAND WAS SUSTAINED  
BY THE CONST. NUMBER

THEREUPON THE CLERK  
PROCEEDED TO CALL THE ROLL  
AND THE Q. WAS DECIDED IN THE

*Negative* YES *48* NO *53*  
*M. M. Clark*

*M. M. Clark*

Thereupon, the Pending Question

Shall the bill be amended as

recommended by the Committee

on Government Operations?

PENDING THE QUESTION *Bill*  
*be amended as recommended*  
*by Gov. Ops.?*

REP. *F. Fry* OF *Pittsford*  
DEMANDED THE YEAS AND NAYS,  
WHICH DEMAND WAS SUSTAINED  
BY THE CONST. NUMBER

THEREUPON THE CLERK  
PROCEEDED TO CALL THE ROLL  
AND THE Q. WAS DECIDED IN THE

*Affirmative* YES *52* NO *49*  
*Thereupon Third Reading*  
*was ordered.*

*M. M. Clark*

HOUSE OF REPRESENTATIVES

*2/21*, 20 *06*

TAKEN UP AND PENDING 3RD  
READING OF THE BILL,  
REP. *F. Fry* OF *Pittsford*  
MOVED THAT THE BILL BE

AMENDED ~~THE BILL BE~~  
~~AMENDED BY THE COMMITTEE ON~~  
~~GOVERNMENT OPERATIONS~~  
~~AS RECOMMENDED BY THE~~  
~~COMMITTEE ON GOVERNMENT~~  
~~OPERATIONS~~

*M. M. Clark*  
ASST. CLERK

Thereupon Rep. Behl of

Hartford moved to substitute

an amendment for the amendment

offered by Rep. Fry of Pittsford

which was agreed to.

*M. M. Clark*  
Thereupon the amendment offered by

Rep. Behl of Hartford was agreed to

and the bill was read a third time

and passed.

*M. M. Clark*

SENATE CHAMBER  
*2/23*, 20 *06*  
READ AND PASSED  
ON *Gov. Ops.*  
*M. M. Clark*  
Assistant Secretary



SENATE CHAMBER

4/13 2006

Entered on the Calendar for Notice.

Assistant Secretary

SENATE CHAMBER

4/18, 2006

Reported favorably with recommendations/ proposals of amendment. Read second time, recommendations/proposals of amendment agreed to and then reading passed.

Assistant Secretary

SENATE CHAMBER

4/19, 2006

Read third time and passed in concurrence with proposals of amendment.

Assistant Secretary

SENATE CHAMBER

4/19, 2006

On motion of Sen. Marza rules were suspended and bill was ordered messaged to House forthwith

Assistant Secretary

HOUSE OF REPRESENTATIVES

4/20, 2006

ENTERED ON THE CALENDAR FOR NOTICE.

ASST. CLERK

HOUSE OF REPRESENTATIVES

4/21, 2006

SENATE PROPOSAL OF AMENDMENT CONSIDERED AND CONCURRED IN

ASST. CLERK